Supreme Court, U.S.
FILED

No. 94 647 SEP 14 1994

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1994

WILLIAM A. WRIGHT, - - - Petitioner,

versus

THOMAS E. CLAY, - - - - - Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF INDIANA

WILLIAM A. WRIGHT, pro se
K.S.R. 88164, Dorm 3
3001 W. Hwy. 146
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45 pp

QUESTIONS PRESENTED

1. Can a state court, in a real estate foreclosure action, grant summary judgment against the pro se property owner who is incarcerated in another state and beyond the state trial courts personal jurisdiction?

2. Can a state court deny due process of law and a meaningful opportunity to be heard, in violation of the United United States Constitution, Article IV, Section (2), paragraph (1), Bill of Rights Amendments IV, V, VII, VIII, IX, and XIV, Section (1)?

3. Does a state court, in a real estate foreclosure action, have a duty to require the personal presence of the property owner who is incarcerated in another state, at all court proceedings? Or does the trial court have a

duty to appoint counsel to protect the prisoner/property owners interest?

4. Can a state trial court grant summary real estate foreclosure judgment against a state prisoner, without the prisoner or his attorneys presence in court?

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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1994

No. _____

WILLIAM A. WRIGHT, - - - - Petitioner,

v.

THOMAS E. CLAY, - - - - - Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT
OF INDIANA

Petitioner, William A. Wright, pro se, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Indiana Court of Appeals, affirmed by the Indiana Supreme Court denial of transfer, re-instating trial court summary

judgment, after trial court had set aside the summary judgment due to Petitioner being denied due process and a meaningful opportunity to be heard.

OPINIONS BELOW

The opinion of the Indiana Court of Appeals, Appeal No. 10A01-8909-CV-349, reinstating vacated summary judgment, appears in Appendix (A) to this petition.

The Indiana Supreme Court denial of transfer appears in Appendix (B) to this petition.

The Indiana trial court docket sheet, setting aside summary judgment, appears in Appendix (C) to this petition.

JURISDICTION

The Indiana Court of Appeals opinion in this matter was filed on February 21, 1994. A timely petition to transfer was filed on March 7, 1994, (petition to trans-

fer appears in Appendix (D) to this petition). The Indiana Supreme Court denial of petition to transfer, appears in Appendix (B) to this petition, dated June 20, 1994. This Court's jurisdiction is invoked under Title 28 U.S.C. 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The United States Constitution, Article IV, Section (2), paragraph (1), and Bill of Rights Amendments IV, V, VI, VII, VIII, IX, and XIV, Section (1), are set forth in Appendix (E) to this petition.

STATEMENT OF THE CASE

Complaint for foreclosure on Petitioner's real estate in Indiana was filed in Clark Superior Court #2, Cause No. 83-S2-441, on September 7, 1983, by the Respondent herein.

Summary judgment was granted on July 18,

1984, without Petitioner's presence in court due to being incarcerated in Kentucky, beyond the Indiana courts jurisdiction. Contrary to Indiana Rules of Court, Petitioner was not represented by counsel. Appeal was denied due to motion to correct errors being one day late.

On February 21, 1989, the trial court set aside the summary judgment, finding that Petitioner was at all times since the commencement of the foreclosure action, incarcerated in the Kentucky and Virginia state prison systems, therefore, had been denied due process of law in that he never had the ability to avail himself of the fundamental "opportunity to be heard". The Respondent appealed.

The Indiana Appeals Court reversed the trial court and ordered the summary judgment re-instated. Petition to the Indiana Supreme Court was denied.

The Respondent successfully argued to

the Indiana Court of Appeals that the summary judgment was an in rem action only. Therefore, Petitioner's personal presence was not required in the Indiana court.

Immediately after the appeals court reinstatement of the summary judgment, Respondent filed a foreign personal judgment claim in Jefferson Circuit Court, Louisville, Kentucky.

Respondent collected the amount of his summary judgment plus interest from Petitioner's personal account at the reformatory in Kentucky. (Total amount collected $38,577.81).

In reversing the trial court, the Appeals Court states:

> "We also note that if Wright (Petitioner), had any valid claim to assert he would be estopped from raising it now". "Because Wright was a defendant in the foreclosure action, the summary judgment for Clay estops Wright from raising any question which was or could have been litigated in the foreclosure action".. ...."Suit resulting in foreclosure

> of a real estate mortgage is an in rem action and all rights in the real estate are forever concluded by the foreclosure decree".

REASONS FOR GRANTING WRIT

Certiorari should be granted for the reason that case law does not exist for state courts to follow in protecting due process guarantees in real estate foreclosure complaints and other civil actions against persons incarcerated in other states out of the personal jurisdiction of the state trial court. (A state prisoner can not cross a state line to appear in a civil action.)

If the Indiana Appeals Court published opinion is allowed to stand, it will be used as a cite to deny due process guarantees to future civil state court defendants who are incarcerated in a state prison beyond the state trial courts personal jurisdiction.

At least, where real estate foreclosure is at issue, the defendant/property owners personal presence should be required in the state trial court to insure meaningful access to the state court.

The United States Constitution places the same value on property rights as liberty rights, therefore, when property rights are involved in a state court action, a prisoner in another state should have the right to cross state lines to protect his property interests.

Interstate procedures are now followed to allow state prisoners to cross state lines for trials involving liberty interests. The same interstate procedures could be followed in property interests.

The Indiana trial court record in this case reveals that the Respondent herein committed perjury and fraud in the trial court and the appeals court. The Indiana Appeals Court opinion rewarded the Respond-

ent for his perjury and fraud.

The Indiana trial court's order setting aside the fraudulent summary judgment was a step toward justice and in compliance with the United States Constitution.

This Court should take the opportunity to balance the scales of justice by granting a writ of certiorari in this case, which would support the fair and honest trial judge in the Clark Superior Court (Indiana).

The opinion of the Indiana Appeals Court, re-instating summary judgment, denies all due process guarantees to this Petitioner and future state prisoners incarcerated in states beyond the state trial courts jurisdiction.

CONCLUSION

For the reasons set forth above, a writ of certiorari should issue to review the judgment/opinion of the Indiana Court of Appeals, affirmed by the Indiana Supreme

Court denial of transfer, in this matter.

Dated: September 13, 1994.

Respectfully submitted,

WILLIAM A. WRIGHT,
Petitioner pro se

K.S.R. 88164, Dorm 3
3001 W. Hwy. 146
LaGrange, Kentucky 40032

"MERE ACCESS TO THE COURTHOUSE DOORS DOES NOT BY ITSELF ASSURE A PROPER FUNCTIONING OF THE ADVERSARY PROCESS."

- Supreme Court Justice
Thurgood Marshall (1908-1993)

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APPENDIX

FOR PUBLICATION

(file stamped) FILED FEBRUARY 21, 1994, Dwayne Brown, Clerk of the Indiana Supreme Court and Court of Appeals

ATTORNEY FOR APPELLANT:

PRO SE
THOMAS E. CLAY
Louisville, Kentucky 40202

ATTORNEY FOR APPELLEE:

PRO SE
WILLIAM A. WRIGHT
LaGrange, KY 40032

IN THE
COURT OF APPEALS OF INDIANA
FIRST DISTRICT

THOMAS E. CLAY, Appellant-Plaintiff, vs. WILLIAM A. WRIGHT and WANDA J. WRIGHT (Now Schaab), Appellee-Defendants.	No. 10A01-8909-CV-349*

APPEAL FROM THE CLARK SUPERIOR COURT NO. 2, Hon. Richard Streigel, Special Judge, Cause No. 83-S2-441

BAKER, J.

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*This case was transferred to this office on January 7, 1994, by direction of the Chief Judge.

Can a defendant who is incarcerated be afforded an opportunity to be heard by the court by means other than his personal appearance?

Appellant-plaintiff Thomas E. Clay challenges the trial court's order setting aside the prior summary judgment in a foreclosure action and staying a sheriff's sale of appellee-defendant William A. Wright's property until Wright is released from prison. Clay contends that the trial court erred in finding that Wright had not been afforded due process of law in Clay's foreclosure action.**

FACTS

Clay is an attorney licensed to practice law in Kentucky. In 1980, Clay provided $15,000 worth of legal services to Wright, who was being prosecuted for several criminal charges in Kentucky. As evidence of his indebtedness to Clay, Wright executed a

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**Wanda J. Wright is not an appellant in this action.

$15,000 promissory note to Clay due on February 1, 1983. To secure the note, Wright and his wife Wanda J. Wright (now Schaab) executed and delivered to Clay the mortgage for their property located in Jeffersonville, Indiana.

On May 24, 1982, Wright was convicted and sentenced to sixty-six years in prison. Wright failed to pay the promissory note when it came due. On September 7, 1983, Clay filed a complaint seeking to foreclose on the mortgage. On September 23, 1983, Wright filed an answer and counterclaim pro se attacking the promissory note and Clay's effectiveness as his counsel. Clay then filed a motion for summary judgment.

At the June 28, 1984 hearing, Wanda represented her interest in the foreclosure action, which was identical to Wright's. On July 18, 1984, the trial court granted Clay's motion for summary judgment, ordered the Clark County Sheriff to sell the Wrights'

property at a public auction, and dismissed Wright's counterclaims as improperly venued and barred by the statute of limitations. Wright then filed a motion to correct errors, which was denied. Thereafter, Wright filed an appeal challenging the trial court's denial of his motion to correct errors as untimely. We dismissed that appeal pursuant to Clay's motion. Wright's petition to transfer to the Indiana Supreme Court was denied.

On June 26, 1986, the Clark County Sheriff published notice of a public auction of the Wrights' property on August 12, 1986. On July 8, 1986, Wright filed a motion for relief from judgment, which was denied. On the same day Wright filed a complaint against Clay, which was dismissed as was the subsequent appeal to this court. On September 26, 1986, Wright filed a motion to correct errors in the foreclosure action, which was denied. Thereafter, Wright filed an appeal

which this court denied on February 11, 1987, for lack of jurisdiction because Wright did not timely file the record. Wright's petition for rehearing was denied on March 23, 1987. On January 22, 1988, Wright filed yet another motion for relief of judgment, which was denied.

On May 5, 1988, Judge Richard G. Streigel was appointed as Special Judge to consider Wright's petition for a temporary restraining order to enjoin the sheriff's sale. After a hearing Judge Streigel stayed the sheriff's sale. He later ordered the parties to submit memoranda on the court's jurisdiction over Wright when the trial court had entered summary judgment in favor of Clay on July 18, 1984.

In his findings of fact entered on February 21, 1989, Judge Streigel found that because Wright was incarcerated at all times since Clay instituted the foreclosure action Wright never had the opportunity to be heard;

and therefore, was denied due process of law. Pursuant to Indiana Trial Rule 60(B)(8), Judge Streigel then set aside the summary judgment in favor of Clay and stayed all further proceedings until Wright is released from prison. Clay's motion to correct errors was denied. Clay now challenges Judge Streigel's findings that Wright was denied the opportunity to be heard in this action.

DISCUSSION AND DECISION***

Clay attacks the trial court's finding

***Wright argues that the summary judgment in Clay's favor is an interlocutory order, and thus, we lack jurisdiction over this appeal. Wright claims that because Clay's foreclosure complaint lists several defendants which the trial court did not designate by name, but by "et al.," in its summary judgment order, that the summary judgment is not a final judgment. This claim is without merit. Et al. is an abbreviation for "and others." Black's Law Dictionary, Fourth Edition (1968)). Where the words et. al. are used in a judgment against several defendants, all the defendants involved in the action are thereby included. Id.

that Wright did not have an opportunity to be heard by the court in the action to foreclose on the mortgage of Wright's real estate.

When reviewing a trial court's findings of fact and conclusions of law, we will not reweigh the evidence or judge witness credibility, and we will not set aside those findings unless they are clearly erroneous. Vanderburgh County v. Rittenhouse (1991), Ind. App., 575 N.E.2d 663, 665-66, trans. denied. We will not reverse the trial court unless, there is a total lack of supporting evidence or the evidence is undisputed and leads only to a conclusion contrary to the trial court's. Id.

Specifically, Clay contends that Wright answered his foreclosure complaint and filed counterclaims, and thus, had the opportunity to be heard.**** The undisputed evidence in

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****Wright argues that because he was incarcerated during the foreclosure proceeding that the trial court did not have personal jurisdiction over him; and therefore, could not foreclose on the mortgaged

this case is that Wright voluntarily filed an answer to Clay's foreclosure action. In his answer, Wright admitted some statements in Clay's complaint, denied others, and asserted defenses of ineffective assistance of counsel and fraud. Wright also filed

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real estate. Wright waived this issue by not raising it in a motion or responsive pleading before he filed his answer. See Ind. Trial Rule 12. The trial court acquired in personam jurisdiction over Wright when he filed his answer without asserting lack of jurisdiction as a defense. See Phillips v. Great Lakes Health Congress (1976), 170 Ind. App. 674, 676, 354 N.E.2d 307, 309. It has long been held that by filing an answer to the merits of a complaint, a defendant waives all objections to the jurisdiction of his person. American Mutual Life Insurance Co. v. Mason (1902), 159 Ind. 15, 20, 64 N.E. 525, 527. Filing an answer is equivalent to a voluntary appearance and gives the court jurisdiction over the person. U.S. Health & Accident Ins. Co. v. Clark (1908), 41 Ind. App. 345, 349, 83 N.E. 760, 761-62. A party who voluntarily appears and answers a complaint may not question whether or not the court has personal jurisdiction over him. Bauer v. Samson Lodge, No. 32, K. of P. (1885), 102 Ind. 262, 266, 1 N.E. 571, 573. There is no constitutional bar to the court's personal jurisdiction over a party who voluntarily appears and files an answer. Phillips, at 309.

several counterclaims against Clay seeking $3,000,000 in damages. In addition, Wright's former wife, Wanda, who had the same interest in the foreclosure action as Wright, was present and represented that interest at the summary judgment hearing.

Thus, although Wright was incarcerated during the foreclosure proceeding, the undisputed evidence shows that not only did Wright have an opportunity to be heard by the court, but that he took full advantage of it.***** The trial court erred in reaching a conclusion to the contrary. We vacate the trial court's order setting aside the summary judgment in Clay's favor and the order staying the sheriff's sale based upon this erroneous finding.

*****Wright also seized every opportunity to be heard after the trial court granted Clay's motion for summary judgment, filing two motions to correct errors, two motions for relief of judgment, two complaints, one petition for a temporary restraining order, three appeals to this court, one petition for rehearing to this court, and one appeal to the Indiana Supreme Court.

We also note that if Wright had any valid claim to assert he would be estopped from raising it now. Because Wright was a defendant in the foreclosure action, the summary judgment for Clay estops Wright from raising any question which was or could have been litigated in the foreclosure action. See Pilliod v. Angola Ry. & Power Co. (1910), 46 Ind. App. 719, 91 N.E. 829, 832; see also Dipert v. Killingback (1953), 124 Ind. App. 18, 25 112 N.E.2d 306, 309 (suit resulting in foreclosure of a real estate mortgage is an in rem action and all rights in the real estate are forever concluded by the foreclosure decree).

Judgment reversed and remanded to reinstate the summary judgment for Clay.

ROBERTSON, J. and
STATON, J. CONCUR.

STATE OF INDIANA (seal of the State of Indiana - 1816) Indianapolis 46204, Tel 317-232-1930
Clerk of the Supreme Court, Court of Appeals and Tax Court
Dwayne M. Brown, Clerk
217 State House

RECEIVED
JUN 23, 1994

CLAY, THOMAS E.
-V-
WRIGHT, WILLIAM/WANDA

Appeal Number
10A01-8909-CV-00349

Lower Cause Number
83-S2-441

You are hereby notified that the SUPREME COURT has on this day 6/20/94, APPELLEE'S PRO SE PETITION TO TRANSFER IS HEREBY DENIED.

RANDALL T. SHEPARD, CHIEF JUSTICE
KM

ALL JUSTICES CONCUR.

WITNESS my name and the seal of said Court, this 20th day of JUNE, 1994.

(s) DWAYNE BROWN
Clerk Supreme Court, Court of Appeals and Tax Court

AND AFTERWARDS, at the Clark Superior Court No. 2, on the 21st day of February, 1989, the following further proceedings were had, to-wit:

Comes now the Court and finds that Defendant, William A. Wright, has been at all times since the commencement of this action continuously incarcerated in the Kentucky and Virginia State Prison Systems. The Court further finds that Defendant has therefore not been afforded due process of law in that he has never had the ability to avail himself of the fundamental "Opportunity To Be Heard." The Court cites Smith V. Peebles (1984), Tenn. Ct. App., 681 SW 2d 567, in support of its finding. The Court now orders, pursuant to Trial Rule 60 B (8), this judgment be set aside, and all further proceedings stayed pending Defendant, William A. Wright's completion of his terms of imprisonment. Issue notice.

Clark Superior Court
No 2

(s) RICHARD STREIGEL,
Special Judge

IN THE
INDIANA SUPREME COURT

CAUSE NO. _____

FILED
MARCH 7, 1994
Dwayne M. Brown, Clerk

WILLIAM A. WRIGHT,
Petitioner(Appellee)

VS.

THOMAS E. CLAY,
Respondent(Appellant)

COURT OF APPEALS NO.
10A01-8909-CV-349

APPEAL FROM CLARK SUPERIOR COURT
CAUSE NO. 83-S2-441

HON. RICHARD STREIGEL
SPECIAL JUDGE

VERIFIED PETITION TO TRANSFER

Comes Petitioner (Appellee/Defendant below) William A. Wright, pro se, and asks this Court to accept transfer of this cause and reverse the decision of the Court of Appeals. In support of this petition, the following is submitted:

1. The Court of Appeals decided this case by opinion on February 21, 1994. (APP EX A).

2. The opinion was against this Petitioner.

3. A petition for rehearing was not filed.

4. The decision/opinion of the Court of Appeals is in error as follows:

(A) Page #2 of the Opinion "Facts", do not correspond with the record.

The record shows that Petitioner Wright (hereafter Wright), was being prosecuted on four criminal charges in Kentucky concerning Indictment Nos. 80-CR-0735 & 80-CR-0916. Clay was retained as counsel on those charges and was given a promissory note and mortgage for his fee (part). After obtaining the note and mortgage, Clay withdrew from that case, leaving Wright to represent himself at trial. The original note and original mortgage contains the Indictment numbers at the top.

Clay has refused to produce the original note and original mortgage, to the trial court, in defiance of a court order (see record docket sheet). The note specifically refers to one case and possible appeal of that case.

Clay alleged to the summary judgment court that the note was for his representation as

stated above, but that the agreement was changed by a new verbal agreement for Clay's representation on two misdemeanor charges which resulted in ten dollar fines by plea agreement.

Clay agrees that he withdrew from the case prior to trial for which the note was given.

An appeal of the summary judgment was never allowed due to appellate counsel, Hon. Alex Voiles, failing to file a timely motion to correct errors.

The summary judgment Court accepted Clay's allegations and mis-statements of the facts without question. Possibly, Clay being a practicing attorney, and the Defendant ((Wright) being an incarcerated convicted felon, led the summary judgment court to place more credibility on Clay's statements which were not supported by the promissory note.

On appeal of the Kentucky sentence of 66 years, Wright asked the Kentucky Supreme Court to order Clay to return the promissory note

and the mortgage to Wright due to Clay withdrawing from that case. The Kentucky Supreme Court failed to make that order. Clay never requested payment from Wright.

Wright's next contact with Clay was notice of the complaint being filed in Clark Superior Court No. 83-S2-441, at issue herein.

Wright was divorced in 1978 from Wanda J. Wright. The terms of the divorce were that Wright (Petitioner), assume all debts (which would include any claim Clay made). The real estate which the note and mortgage referred to was awarded to Petitioner (Wright). Wanda J. Wright's name was still on the deeds at the time of the mortgage and note to Clay, but Wanda J. Wright had no legal liability for any payment of Clay's claim.

Attached hereto, marked Exhibit (A), is copy of divorce decree and affidavit from Wanda J. Wright.

(B) Appeals Court opinion, Page #3, top paragraph, states, (see quote on following page)

"At the June 28, 1984, hearing, Wanda represented her interest in the foreclosure action, which was identical to Wright's" (Petitioner).

The Appeals Court opinion also, on Page #6, top of page, states,

"Wife Wanda was present and represented Petitioner (Wright's interests".

(C) The Appeals Court opinion, Page #3, top paragraph, refers to Wright's counterclaim being dismissed due to improper venue and statute of limitations.

Clay mis-informed the summary judgment court that the Kentucky Statute of limitations had expired for Wright to claim anything. Years later, Wright found that his time in prison extended the statute of limitations. See attached Exhibit (B), KRS 413; 280, KRS 412.310, KRS 413.330. Therefore, Wright's counterclaim had been dismissed in error.

(D) The Appeals Court opinion refers to several attempts Wright made to be heard, thereby, allowing personal jurisdiction.

Wright replies that at the time of Clay's filing the complaint in Clark Superior Court No. 2, 83-S2-441, Wright knew practically nothing about how to get the true facts before the court in an understandable manner. Wright made every stumbling effort possible to expose the injustice which had occurred in this case by the summary judgment. During one effort, Wright did not know that the record must be filed with the Appeals Court within 90 days, therefore, that appeal was dismissed.

(E) The Appeals Court opinion, Page #6 last paragraph states,

> "We also note that if Wright had any valid claim to assert, he would be estopped from raising it now". "Because Wright was a defendant in the foreclosure action, the summary judgment for Clay estops Wright from raising any question which was or could have been litigated in the foreclosure action". "Suit resulting in foreclosure of real estate mortgage is an en rem action and all rights are forever concluded by the foreclosure decree".

Wright replies (to the foregoing Appeals Court quotation): The last paragraph of the Appeals Court opinion as stated above, indicates that the other parts of the opinion was not necessary. Further, the Appeals Court indicates that a summary judgment on foreclosure of real estate can not be appealed. Further, the Appeals Court indicates that a foreclosure judgment is automatically an en rem action, without the real estate being named as a defendant in Indiana. (Federal rules require that en rem actions must name the real estate as a defendant).

Clay's complaint did not name the real estate as a defendant. Further, the Appeals Court's opinion contradicts trial Rule 60.

As shown above, the opinion of the Court of Appeals erroneously and materially misstates the record, concerning the status of Wanda J. Wright and Clay's representation.

Wanda J. Wright had no legal interest or liability in this case. Clay failed to

represent Wright as agreed in promissory note, therefore, summary judgment should not have been granted.

Appellee's brief (Wright's), "JURISDICTIONAL STATEMENT" and "ARGUMENT", Pages 8, 9, & 10, shows that summary judgment was interlocutory. Therefore, the trial court was authorized to set aside the interlocutory summary judgment.

The Appeals Court opinion did not address the interlocutory argument.

The trial court, Judge Richard Streigel, found that Wright had in fact, not been heard even though Wright had made several attempts to show facts of fraud and mis-representations including altered promissory notes.

The merits of Wright's allegations have never been considered by the summary judgment court, the Appeals Courts, or any other court due to Wright's lack of knowledge in past attempts to follow court rules in form and timely submissions. The only time Wright has

been heard was before Judge Richard Streigel, who found that the interlocutory summary judgment must be set aside.

Court rules provide for counsel or guardian ad litem be appointed by a trial court for incarcerated persons. (See trial rule 17(C), and Appellee's brief, Page #5.)

The summary judgment court failed to follow rules of protection for this Petitioner, therefore, summary judgment trial was held without Wright being represented in any way.

Without any representation for Wright, the summary judgment court was convinced by Clay (without Clay being cross examined or challenged in any way), that Wright had made a later agreement with Clay concerning misdemeanor charges.

Evidence is now in the record of this case which shows that the summary judgment was error and that the true facts now show Clay committed fraud in obtaining the summary judgment.

The re-instatement of the fraudulent judgment by the Appeals Court, compensates Clay for his illegal act.

Courts in the past have stressed that meaningful access must be afforded to all parties in an action. Just access is not enough.

The summary judgment court denied Wright any access to that summary judgment trial wherein Wright could have had the opportunity to confront his accuser (Clay), and refute Clay's claims.

Wright's answer to Clay's complaint adequately presented evidence of altered promissory notes and denied that Clay represented Wright. There was issues for a jury trial. The summary judgment was error and a complete surprise to Wright.

Wright's incarceration and reputation, plus Clay's status as an attorney, have prevented justice in this case prior to the erroneous interlocutory summary judgment being set aside by Judge Streigel.

Now the Appeals Court has re-instated a fraudulent interlocutory summary judgment for an attorney who has committed a criminal act. (Documents in the record of this case verify fraud by Clay).

Wright believes that even if the summary judgment court had personal jurisdiction, that did not allow that court to deny Wright access or representation at the summary judgment trial.

This case has been delayed for approximately five years due to issues in bankruptcy courts (which time should not be considered as any delay in attempts by Wright to correct the injustice herein).

If Wright had been heard on the merits of a timely appeal of the interlocutory summary judgment, the interlocutory summary judgment would have been vacated by the Appeals Court in 1984, if the 1984 Appeals Court did not have the same opinion as the present Appeals Court that "A foreclosure on real estate is

an en rem action and all rights are forever concluded by the foreclosure decree". (See last paragraph of Appeals Court opinion 2/21/94). Appellee's brief (Petitioner Wright), presented the interlocutory issue to the Appeals Court but the court failed to address that issue.

If the summary judgment order failed to state "Final and Appealable Order" as required by trial rules 54(B), 56(C), and 58(B), the summary judgment herein must be considered interlocutory. (See Pages 8, 9, and 10 of Appellee's brief).

The summary judgment herein being interlocutory, the judge in Clark Superior Court, Honorable Richard Streigel, was well within his authority to set aside the interlocutory summary judgment for a reason, or without any reason, because the interlocutory judgment was not designated as a final order as required by court rules.

Therefore, the Appeals Court did not have

jurisdiction to review Judge Streigel's order setting aside an interlocutory order.

Petitioner asks this Court to review the Appellee's brief completely, wherein, this Court will find that this case is definitely a miscarriage of justice and this Court is the only tribunal left with the authority to correct the Indiana Court of Appeals erroneous opinion issued on February 21, 1994.

This case cries out for justice. The Clark Superior Court, Honorable Richard Streigel, reviewed the record and found sufficient reasons to set aside the interlocutory summary judgment, and stayed further proceedings in the case until all parties could appear before the trial court and be availed meaningful access at a trial of the issues. Judge Streigel did not act without finding sufficient reason.

The Clark Superior Court, Judge Richard Streigel, was unable to find Indiana case law on point concerning a defendant being incarcerated out of the State of Indiana during

the litigation of a civil action, therefore, a Tennessee case, Smith v. Peebles was cited in the order setting aside the interlocutory summary judgment.

It appears that the issues in this case have not been addressed before by an Indiana Appeals Court due to the Appeals Court opinion of February 21, 1994, stating "FOR PUBLICATION". Petitioner believes that this Court should review the Appeals Court opinion very thoroughly due to it being, "FOR PUBLICATION", thereby becoming the law to cite in future Indiana cases.

IN CONCLUSION, for the reasons herein stated and reasons contained in Appellee's brief to the Appeals Court, Petitioner asks that this Court grant transfer of this case, reverse the decision/opinion of the Appeals Court rendered on February 21, 1994, and allow the Clark Superior Court order setting aside the interlocutory summary judgment to stand. Petitioner asks for all other relief which this Court deems just and proper.

VERIFICATION

I, Petitioner, William A. Wright, hereby affirm, under penalties for perjury, that the foregoing statements are true.

Respectfully submitted,

(s) WILLIAM A. WRIGHT, Pro se
K.S.R. 88164, Dorm 3
3001 W. Hwy. 146
La Grange, KY 40032

+ Certificate and other attachments.

ARTICLE IV:

Section 2. (1) The Citizens of each State shall be entitled to all Privileges and immunities of Citizens in the several States.

844

PREAMBLE TO BILL OF RIGHTS

Amendment IV (1791): The right of the people to be secure in their persons, houses, papers, and effects, against seizures, shall not be violated.....

Amendment V (1791): ....., nor be deprived of life, liberty, or property, without due process of law; .....

845

Amendment VI (1791):....., to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Amendment VII (1791): In Suits at common law

where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved,.....

Amendment IX (1791): The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

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Amendment XIV (1868):
Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.